

RESOLUTION NUMBER R-294124

ADOPTED ON NOVEMBER 14, 2000

RESOLUTION DELEGATING THE AUTHORITY TO
DETERMINE PUBLIC CONVENIENCE OR NECESSITY FOR
ALCOHOLIC BEVERAGE LICENSING TO THE POLICE
DEPARTMENT AND ESTABLISHING A REVIEW PROCESS.

WHEREAS, pursuant to applicable sections of the Business and Professions Code, the Department of Alcoholic Beverage Control is charged with the responsibility of reviewing applications and issuance of licenses for the sale and manufacture of alcoholic beverages in the State of California; and

WHEREAS, Section 23958 of the Business and Professions Code provides that the Department of Alcoholic Beverage Control shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in, or add to an undue concentration of licenses, except as provided in Section 23958.4 of the Business and Professions Code; and

WHEREAS, Section 23958.4 of the Business and Professions Code provides that, notwithstanding the limitations of Section 23958, the Department of Alcoholic Beverage Control may issue a license if the “public convenience or necessity” would be served by the issuance of such license; and

WHEREAS, Section 23958.4 further provides that the determination of “public convenience or necessity” for all off-sale liquor licenses, and certain on-sale liquor licenses, be made by the local governing body, or its designated subordinate officer or body, in which the

applicant premises are located; and

WHEREAS, the determination of whether a business would meet the “public convenience or necessity” is based on, among other things, crime statistics, and the ratio of licenses to population in the area; and

WHEREAS, the City Council finds that the Police Department has the ability and resources to determine incidence of crime and the effect of undue concentration of businesses selling alcoholic beverages; and

WHEREAS, the City Council desires to delegate the authority to make the “public convenience or necessity” determination to the San Diego Police Department, and to establish a procedure for appeal of such determinations, and to provide for certain other procedural matters concerning the review of such determinations by the San Diego Police Department, NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Police Chief, or his designee, is authorized to make the “public convenience or necessity” determinations for purposes of Business and Professions Code 23958.4.

2. All off-sale or on-sale alcoholic beverage license applications that require a determination of “public convenience or necessity”, pursuant to Business and Professions Code Section 23958.4, shall be processed as follows:

(a) The applicant shall submit a form provided by the Department of Alcoholic Beverage Control for a determination of “public convenience or necessity” to the San Diego Police Department, together with an application cost recovery fee as may be established by the Police Department, and any information or documentary evidence to be considered by the

Police Department tending to show that the “public convenience or necessity” would be served by issuance of the license.

(b) For purposes of determining whether the “public convenience or necessity” would be served by issuance of the license, The Chief of Police, or his designee, shall consider the following criteria:

(1) Whether the issuance involves an existing business with a license which is being transferred to a new location, and which will not result in an increase in the total number of off-sale retail liquor licenses or on-sale retail liquor licenses in the City, or in the census tract in which the business would be located.

(2) Whether the business, by reason of its location, character, manner or method of operation, merchandise, or potential clientele, will serve a segment of the City's business or residents not presently being served.

(3) Whether the business will be located within a 600-foot radius of incompatible facilities, such as public and private schools, day care centers, churches, parks, homeless shelters, and alcohol rehabilitation centers, and facilities designed and operated to serve minors.

(4) Whether the location of the license will be in a crime data area covered by police department statistics, which has a twenty percent greater number of reported crimes than the average number of reported crimes for all crime data areas in the City, over the previous year. For this purpose, "reported crimes" means reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft, combined with all arrests for other misdemeanor or felony crimes.

(5) Whether the issuance of the license involves an existing business,

which has been located at a site which has had three or more reported crimes as defined in (4) above within the previous one-year period.

(6) Whether the issuance of the license will promote the goals and policies of the City's General Plan, any applicable specific plan, or any similar policies that have been adopted by the City Council.

(7) Whether the application is for a premises where a previous license has been revoked within the previous one-year period.

(8) Whether the applicant has been convicted of any felony.

(9) Whether the premises are located within 100 feet of residentially zoned property. If a parking lot exists for the benefit of patrons then the 100 feet begins at the perimeter of the parking lot.

(10) Whether any other information supplied by the applicant, or other competent evidence shows that the “public convenience or necessity” will be served by issuance of the license.

When consideration is given in determining “public convenience or necessity”, any one of the foregoing guidelines may be sufficient grounds for denial. Each application shall be judged on an individual basis and any one criteria or combination of criteria may be waived as the result of imposed conditions.

(c) The Chief of Police, or his designee, shall approve or deny the request for the determination of “public convenience or necessity” on the form provided by the Department of Alcoholic Beverage Control within 90 days of receipt of the application. An explanation outlining the reasons for denial shall be made available to applicants in writing, upon request. The Chief of Police, or his designee, shall notify the Department of Alcoholic Beverage Control of their determination, along with any conditions required as a basis for such determination.

(d) A decision denying a determination of “public convenience or necessity” may be appealed by the applicant to the City Manager, or his designee, and ultimately to the City Council pursuant to the appeal procedures provided in San Diego Municipal Code section 33.0501. Written notice of any final decision approving or denying a determination of “public convenience or necessity” shall be given to the applicant and the Department of Alcoholic Beverage Control.

(e) For applicants requiring both a “public convenience or necessity” determination and a separate conditional use permit or other land use permit, the application to the Department of Alcoholic Beverage Control shall not be deemed complete unless the “public convenience or necessity” determination has been made and any required land use permits have been approved.

APPROVED: CASEY GWINN, City Attorney

By _____
Kristin Schenone
Deputy City Attorney

KS:cdk
10/23/00

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